

Michele R. Stafford, Esq. (SBN 172509)  
Tino X Do, Esq. (SBN 221346)  
SALTZMAN & JOHNSON LAW CORPORATION  
1141 Harbor Parkway, Suite 100  
Alameda, CA 94502  
Telephone: (510) 906-4710  
Email: [mstafford@sjlawcorp.com](mailto:mstafford@sjlawcorp.com)  
Email: [tdo@sjlawcorp.com](mailto:tdo@sjlawcorp.com)

Attorneys for Plaintiffs, Operating Engineers'  
Health And Welfare Trust Fund for Northern California, et al.

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

OPERATING ENGINEERS' HEALTH AND  
WELFARE TRUST FUND FOR NORTHERN  
CALIFORNIA; DAN REDING and JAMES E.  
MURRAY, Trustees;

PENSION TRUST FUND FOR OPERATING  
ENGINEERS; DAN REDING and JAMES E.  
MURRAY, Trustees;

PENSIONED OPERATING ENGINEERS' HEALTH  
AND WELFARE TRUST FUND; DAN REDING and  
JAMES E. MURRAY, Trustees;

OPERATING ENGINEERS AND PARTICIPATING  
EMPLOYERS PRE-APPRENTICE, APPRENTICE  
AND JOURNEYMEN AFFIRMATIVE ACTION  
TRAINING FUND; DAN REDING and JAMES E.  
MURRAY, Trustees;

OPERATING ENGINEERS LOCAL UNION NO. 3  
VACATION, HOLIDAY AND SICK PAY TRUST  
FUND; DAN REDING and JAMES E. MURRAY;

OPERATING ENGINEERS LOCAL 3 HEAVY AND  
HIGHWAY TRUST FUND,

Plaintiffs,

v.

CALIFORNIA CONSTRUCTION CONTROL, INC.,

Case No.

**COMPLAINT**

a California Corporation,  
Defendant.

#### Parties

1. The Operating Engineers' Health and Welfare Trust Fund for Northern California ("Health Fund"); Pension Trust Fund for Operating Engineers (which includes the Pension Plan for the Pension Trust Fund for Operating Engineers, and the Operating Engineers Annuity Plan) ("Pension Fund"); Pensioned Operating Engineers' Health and Welfare Trust Fund ("Pensioned Health Fund"); Operating Engineers and Participating Employers Pre-apprentice, Apprentice and Journeymen Affirmative Action Training Fund ("Affirmative Action Training Fund"); and the Operating Engineers Local Union No. 3 Vacation, Holiday and Sick Pay Trust Fund ("Vacation Fund") are employee benefit plans as defined in the Employee Retirement Income Security Act of 1974 ("ERISA") § 3(3), 29 U.S.C. § 1002(3), and are multi-employer plans as defined by ERISA § 3(37)(A), 29 U.S.C. § 1002(37)(A). Dan Reding and James E. Murray are Co-Chairmen of the Joint Boards of Trustees of the Health Fund, Pension Fund, Pensioned Health Fund, Affirmative Action Training Fund, and Vacation Fund, and have authority to act on behalf of all Trustees of those Funds. The Funds and their fiduciaries are together referred to herein as "ERISA Plaintiffs" or "Plaintiffs."

2. The Operating Engineers Local 3 Heavy and Highway Trust is a Trust established under the Labor Management Relations Act ("LMRA"), 302(c)(9), 29 U.S.C. § 186(c)(9).

3. California Construction Control, Inc., a California corporation, is an employer by virtue of ERISA § 3(5), 29 U.S.C. § 1002(5), and NLRA § 2(2), 29 U.S.C. § 152(2), 29 U.S.C. § 152(2).

#### Jurisdiction

4. Jurisdiction exists in this Court over the claims asserted by ERISA Plaintiffs by virtue of ERISA § 502, 29 U.S.C. § 1132, in that ERISA Plaintiffs seek to enforce the provisions of ERISA and the terms of their plans, seek to enjoin the acts and practices which violate ERISA, seek equitable relief to redress such violations, and seek all other appropriate relief under ERISA.

5. Jurisdiction exists in this Court over all the claims by virtue of Labor Management

1 Relations Act (“LMRA”) § 301, 29 U.S.C. § 185, in that ERISA Plaintiffs seek to enforce the terms and  
 2 conditions of a valid collective bargaining agreement between Defendant and the Union.

3 6. To the extent jurisdiction over any claim does not exist under ERISA or the LMRA,  
 4 supplemental jurisdiction exists in this Court over such claims by virtue of 29 U.S.C. § 1367 in that they  
 5 arise out of a common nucleus of operative facts that form the basis of the federal claims asserted  
 6 herein, each of which has a substantial ground in federal jurisdiction.

#### 7 Venue

8 7. Venue is conferred upon this Court by ERISA § 502, 29 U.S.C. § 1132. Where an action  
 9 is brought under ERISA § 502 in a district court of the United States, it may be brought at Plaintiffs’  
 10 discretion, in the district where the plan is administered, where the breach took place, or where a  
 11 defendant resides or may be found, and process may be served in any other district where a defendant  
 12 resides or may be found. ERISA Plaintiffs’ Trust Funds are administered in this district at their principal  
 13 place of business in Alameda, California. Thus, jurisdiction and venue are properly grounded with this  
 14 Court.

15 8. Venue exists in this Court with respect to the claims under LMRA § 301(a), 29 U.S.C. §  
 16 185, as this Court has jurisdiction over the parties, as the Operating Engineers Local Union No. 3 of the  
 17 International Union of Operating Engineers, AFL-CIO (“Union”) maintains its principal place of  
 18 business in this district, its duly authorized officers or agents are engaged in representing employee  
 19 members in this district, and the claims arise in this district.

#### 20 Intradistrict Assignment

21 9. The basis for assignment of this action to this Court’s Oakland Division is that all of the  
 22 events and omissions giving rise to Plaintiffs’ claims occurred in the County of Alameda, where ERISA  
 23 Plaintiffs’ Funds and the Bargained Entities are administered, and where Defendant therefore failed to  
 24 fulfill their statutory and contractual obligations to Plaintiffs.

#### 25 Bargaining Agreements

26 10. Defendant entered into the Independent Northern California Technical Engineers  
 27 Agreement (“Independent Agreement”) with the Union, which incorporates the Technical Engineers  
 28

1 Master Agreement (“Master Agreement”) between the Union and the California & Nevada Civil  
2 Engineers and Land Surveyors Association, Inc. *fka* Western Counties Land Surveyors Association.  
3 The Independent Agreement and Master Agreement are collectively referred to hereinafter as the  
4 “Bargaining Agreements.” The Bargaining Agreements, which incorporate the terms of the Trust  
5 Agreements establishing the Trust Funds (“Trust Agreements”), require Defendant to provide employer  
6 contributions to Plaintiffs’ Trust Funds, to the Union for union dues, and to the other plans more fully  
7 described in the Bargaining Agreements. ERISA Plaintiffs are third-party beneficiaries of the  
8 Bargaining Agreements.

9 11. Under the terms of the Bargaining Agreements, and Trust Agreements incorporated  
10 therein, Defendant is required to pay certain contributions to the Operating Engineers’ Vacation,  
11 Holiday & Sick Pay Trust Fund, Contract Administration Fund; Job Placement Center and Market Area  
12 Committee Administration Market Preservation Fund; Construction Industry Force Account; Operating  
13 Engineers Industry Stabilization Trust Fund; Heavy & Highway Trust Fund, and Business Development  
14 Trust Fund (including the California Alliance for Jobs) (together referred to herein as “Bargained  
15 Entities”) and dues to the Union. Plaintiffs’ Boards of Trustees have been authorized to collect and  
16 distribute monies due to the Bargained Entities as well as dues due to the Union under the Bargaining  
17 Agreements and Trust Agreements.

18 12. Under the Bargaining Agreements and Trust Agreements, which are incorporated into the  
19 Bargaining Agreements and made binding on Defendant, Defendant is required to regularly pay to  
20 ERISA Plaintiffs, the Bargained Entities, and the Union, certain sums of money, the amounts of which  
21 are determined by the hours worked by Defendant’s employees. Contributions are due on the fifteenth  
22 (15th) day of the month following the month in which hours were worked, and are considered  
23 delinquent if not received by the twenty-fifth (25th) day of that month. Defendant is also required,  
24 pursuant to the Bargaining and Trust Agreements, to pay liquidated damages in the amount of ten  
25 percent (10%) for each delinquent contribution, but in the amount of twenty percent (20%) for each  
26 delinquent contribution which is the subject of litigation. Moreover, the Bargaining and Trust  
27 Agreements provide that interest accrues on delinquent contributions at the rates reasonably set by the  
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Trustees from the date they become delinquent, which is the twenty-sixth (26th) day of the month in which payment was due, until paid in full.

13. The Bargaining and Trust Agreements further require Defendant to maintain time records or time cards, and to permit an authorized Trust Fund representative to examine such records of Defendant as are necessary to determine whether Defendant has made full payment of all sums owed to ERISA Plaintiffs. Should an audit of Defendant's records reveal Defendant has failed to provide full and prompt payment of all sums due to Plaintiffs, Defendant must reimburse Plaintiffs for the amounts due, including audit fees, in addition to any other obligations pursuant to the Bargaining and Trust Agreements.

#### Factual Allegations

14. Defendant has failed and refused to comply with an audit of their payroll records for the period of January 1, 2013 through December 31, 2017.

15. Plaintiffs are entitled to recover any and all other contributions, and all liquidated damages and interest on delinquent contributions not specified above, found due on timecards, audit, or otherwise, including estimated contributions for any months Defendant fails to report to Plaintiffs, through the time of Judgment. Plaintiffs reserve the right to conduct a further audit to determine whether there are any additional amounts due from Defendant.

#### **FIRST CAUSE OF ACTION For Audit Compliance, Payment of Delinquent Contributions, Interest, Liquidated Damages, Attorneys' Fees and Costs Against Defendant**

16. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 15, above.

17. Defendant has a contractual duty to timely pay the required contributions to Plaintiffs and the Bargained Entities, and to timely pay dues to the Union, pursuant to the Bargaining Agreements and Trust Agreements. Defendant also has a contractual duty under the Bargaining Agreements, and Trust Agreements incorporated therein to permit an audit of its records to determine whether it is making full and prompt payment of all sums required to be paid by them to Plaintiffs, and to pay Plaintiffs all amounts found due as a result of an audit, including audit fees.

19. In addition, Defendant has a statutory duty to timely make the required payments to

1 Plaintiffs under ERISA § 515, 29 U.S.C. § 1145, and LMRA § 301(a).

2 20. By failing to permit an audit of its records, Defendant breached the Bargaining  
3 Agreements and Trust Agreements and are in violation of ERISA § 515, 29 U.S.C. § 1145, and LMRA §  
4 301(a).

5 21. Defendant's failure and refusal to permit the audit and pay the required contributions was  
6 at all times, and still is, willful. Defendant continues to breach the Bargaining Agreements, and  
7 incorporated Trust Agreements, by failing to permit the audit and pay all amounts owed as alleged. Said  
8 refusal is unjustified and done with knowledge and intent.

9 22. ERISA Plaintiffs are without an adequate remedy at law and will suffer continuing and  
10 irreparable injury, loss and damage unless Defendant is ordered specifically to perform all obligations  
11 required on Defendant's part to be performed under ERISA, 29 U.S.C. §§ 1101-1381, the LMRA, 29  
12 U.S.C. §§ 141-197, and the Bargaining Agreements and Trust Agreements, and are restrained from  
13 continuing to refuse to perform as required thereunder.

14 23. This Court is authorized to issue injunctive relief based on the traditional standard. As set  
15 forth above, ERISA Plaintiffs have a strong likelihood of success on the merits. There is the possibility  
16 that ERISA Plaintiffs' Trust Funds and their participants will suffer irreparable injuries. The balance of  
17 hardships and advancement of public interest favor ERISA Plaintiffs.

18 24. This Complaint does not in any manner relate to statutory withdrawal liability that may or  
19 may not be assessed against Defendant. ERISA Plaintiffs expressly reserve the right to pursue any such  
20 withdrawal liability claims against Defendant as provided by ERISA Plaintiffs' Plan Documents, Trust  
21 Agreements, and the law.

## 22 Prayer

23 WHEREFORE, Plaintiffs pray as follows:

24 1. For a judgment against Defendant as follows:

25 (a) Any unpaid contributions, due at time of Judgment, including those specified  
26 above as well as any other contributions determined as due by audit, timecards, or otherwise, including  
27 estimated contributions for any months Defendant fails to report to Plaintiffs, pursuant to ERISA §  
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502(g)(2)(A), 29 U.S.C. § 1132(g)(2)(A);

i. To ERISA Plaintiffs and the Bargained Entities, in accordance with ERISA § 502(g)(2)(A), 29 U.S.C. § 1132(g)(2)(A) and the Bargaining Agreements;

ii. To the Union in accordance with the Bargaining Agreements.

(b) Liquidated damages on all late-paid and unpaid contributions in an amount provided for under the Bargaining and Trust Agreements, and with respect to ERISA Plaintiffs, ERISA § 502(g)(2)(c), 29 U.S.C. § 1132(g)(2)(c).

(c) Interest on all late-paid and unpaid contributions at the rates set in accordance with the Bargaining Agreements, the Trust Agreements, and ERISA § 502(g)(2)(B), 29 U.S.C. § 1132(g)(2)(B).

2. Plaintiffs' reasonable attorneys' fees and costs of this action, including any audit fees, in accordance with ERISA § 502(g)(2)(D) and (E), 29 U.S.C. § 1132(g)(2)(D) and (E); and in accordance with the Bargaining Agreements for all Bargained Entities; and with LMRA § 301, 29 U.S.C. § 185, for all Plaintiffs.

3. For an order,

(a) requiring that Defendant comply with its obligations to Plaintiffs under the terms of the Bargaining Agreements and the Trust Agreements;

(b) enjoining Defendant from violating the terms of those documents and of ERISA; and

(c) enjoining Defendant from disposing of any assets until said terms have been complied with, and from continuation or operation of Defendant's business until said terms have been complied with.

4. That the Court retain jurisdiction of this case pending compliance with its orders.

5. For such other and further relief as the Court may deem just and proper.

DATED: April 3, 2020

SALTZMAN & JOHNSON LAW CORPORATION

By: /S/ Tino X. Do

Tino X. Do

Attorneys for Operating Engineers' Health And Welfare Trust Fund for Northern California, et al.

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